

Message Text

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E.O. 11652: N/A

TAGS: ETRD, JA

SUBJECT: ZENITH DECISION -- GOJ NOTE

REF: A) STATE 82258 B) STATE 20440

1. JAPANESE EMBASSY OFFICIALS, ECONOMIC MINISTER FUKADA
AND COMMERCIAL COUNSELOR YOKOYAMA PRESENTED DEPARTMENT
WITH A NOTE ON THE CUSTOMS COURT DECISION IN THE ZENITH
CASE URGING THE USG TO TAKE ALL APPROPRIATE STEPS WITHIN
ITS POWER AS SOON AS POSSIBLE IN ORDER TO MINIMIZE ADVERSE
EFFECTS OF THE DECISION ON JAPAN'S EXPORTS.

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PAGE 02 STATE 084152

2. IN HIS ORAL PRESENTATION, FUKADA SAID THAT HE REALIZED
THAT NOTHING COULD BE SOLVED TODAY AND HE RECOGNIZED THAT
THE GOJ WAS IN GOOD HANDS (I.E., THAT THE USG WOULD PURSUE
THE CASE WITH VIGOR). HE ALSO REMARKED THAT THE TIMING
OF THE DECISION WAS UNFORTUNATE AS WE ARE TRYING TO
RESOLVE THESE LARGER ISSUES IN THE MTN.

3. WE ASSURED FUKADA THAT WE WOULD DO ALL WE COULD TO HAVE THE DECISION REVERSED AND THAT JUSTICE WAS OPTIMISTIC WE COULD WIN ON APPEAL. WE POINTED OUT THAT A LEGISLATIVE RECOURSE (SUGGESTED BY THE JAPANESE IN THEIR NOTE) COULD BE COUNTERPRODUCTIVE AT THIS TIME. WE

INFORMED FUKADA THAT JUSTICE WAS FILING FOR AN APPEAL TO THE COURT OF CUSTOMS AND PATENT APPEALS ON FRIDAY APRIL 15 AND THAT THE APPEAL MIGHT POSSIBLY BE HEARD BY JUNE AND DECIDED IN EARLY FALL. THE LAW REQUIRES THAT THESE CASES BE HANDLED EXPEDITIOUSLY.

4. WE POINTED OUT TO FUKADA AN ANOMALY IN THE DECISION. THE COURT ORDERED THAT TREASURY IMMEDIATELY IMPOSE COUNTERVAILING DUTIES WHEN THE NEXT STEP ACCORDING TO STATUTE IS SUSPENSION OF LIQUIDATION (SEE REFEL B). TREASURY IS SEEKING TO CORRECT THE COURT ORDER BUT TO AVOID BEING IN CONTEMPT HAS INSTRUCTED CUSTOMS TO IMMEDIATELY SUSPEND LIQUIDATION. THE IMMEDIATE SUSPENSION WAS CONTRARY TO OUR EARLIER UNDERSTANDING THAT SUSPENSION OF LIQUIDATION WOULD ONLY OCCUR TWO OR THREE WEEKS AFTER THE COURT DECISION FOLLOWING PUBLICATION OF A NOTICE OF SUSPENSION OF LIQUIDATION IN CUSTOMS BULLETIN. CUSTOMS COURT DECISION IS BEING POUCHED.

5. THE TEXT OF THE GOJ NOTE FOLLOWS: BEGIN TEXT:

THE EMBASSY OF JAPAN PRESENTS ITS COMPLIMENTS TO THE LIMITED OFFICIAL USE

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PAGE 03 STATE 084152

DEPARTMENT OF STATE, AND WITH RESPECT TO THE RECENT DECISION OF THE UNITED STATES CUSTOMSCOURTON THE "ZENITH V. U.S. COUNTERVAILING DUTY CASE", HAS THE HONOR TO INFORM THE LATTER OF THE FOLLOWING VIEWS OF THE GOVERNMENT OF JAPAN:

1. THE GOVERNMENT OF JAPAN FEELS OBLIGED TO LODGE A PROTEST WITH THE UNITED STATES GOVERNMENT AGAINST THE RECENT DECISION OF THE UNITED STATES CUSTOMS COURT THAT THE EXPORT EXEMPTION OF THE COMMODITY TAX IN JAPAN SHOULD BE SUBJECT TO COUNTERVAILING DUTY. THE DECISION DISREGARDS THE ESTABLISHED INTERNATIONAL RULE THAT THE EXEMPTION OF EXPORT PRODUCTS FROM INTERNAL TAXES, SUCH AS THE COMMODITY TAX IN JAPAN, DOES NOT CONSTITUTE A COUNTER-AVAILABLE SUBSIDY.

2. THE GOVERNMENT OF JAPAN URGES THE UNITED STATES GOVERNMENT TO TAKE ALL APPROPRIATE STEPS WITHIN ITS POWER AS SOON AS POSSIBLE (E.G. TO SEEK LEGISLATIVE

RECOURSE), IN ORDER TO MINIMIZE THE ADVERSE EFFECTS OF THE DECISION ON JAPAN'S EXPORTS OF THE PRODUCTS CONCERNED AND TO ENSURE UNITED STATES COMPLIANCE WITH THE INTERNATIONAL RULE. THE GOVERNMENT OF JAPAN ANTICIPATES THAT THE UNITED STATES GOVERNMENT WILL MAKE EVERY EFFECT TO INSURE THAT THE DECISION DOES NOT BECOME A SERIOUS BARRIER TO THE FURTHERANCE OF INTERNATIONAL TRADE.

3. THE GOVERNMENT OF JAPAN ALSO EXPECTS THE UNITED STATES GOVERNMENT TO DO ITS UTMOST TO WIN THE CASE IN THE HIGHER COURTS SO THAT THE INTERNATIONAL RULE MAY BE REAFFIRMED. END TEXT.
VANCE

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